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September 6, 2002

**BY HAND DELIVERY**Ms. Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, D.C. 20554**RECEIVED**

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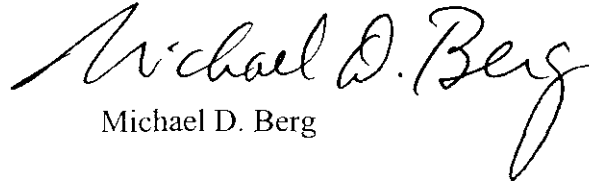
FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARYRe: Written Ex Parte Submission and Oral Presentation in CS Docket  
Nos. 98-120, 00-96 & 00-2

Dear Ms. Dortch:

On behalf of Gemstar-TV Guide International, Inc. ("Gemstar"), on September 5, 2002 the attached two-page communication was submitted via e-mail to, and discussed by telephone with, Mr. Paul Margie, Legal Advisor to Commissioner Copps, in connection with CS Docket No. 98-120.

An original of this filing, and two copies for each proceeding listed above, are being submitted to the Secretary's Office in compliance with Section 1.1206 of the Commission rules.

Respectfully submitted,

  
Michael D. Berg

Attachment

cc: Chairman Michael C. Powell  
Commissioner Kathleen Q. Abernathy  
Commissioner Michael J. Copps  
Commissioner Kevin J. Martin  
Ms. Susan M. Eid  
Mr. Paul MargieMs. Stacy Robinson  
Ms. Alexis Johns  
Ms. Catherine C. Bohigian  
Mr. W. Kenneth Ferree  
Mr. Rick Chesson

**Berg, Michael D.**

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**From:** GSimon1118@aol.com  
**Sent:** Thursday, September 05, 2002 4:55 PM  
**To:** pmargie@fcc.gov  
**Subject:** Ex parte filing re Gemstar and digital must

Dear Paul:

I am working with Gemstar to promote competition for electronic programming guides just as i worked for several years to promote open access for ISP's on cable networks. I attach a document detailing how important it is for the definition of digital must carry to include independent programming guides such as Gemstar's. I know that Alexis Johns has met with Gemstar but given my work on open access issues that you are familiar with I wanted to contact you directly in the hopes you would relay the importance of this issue to Commissioner Copps.

Please give me a call this afternoon if you are available before the sunshine notice so that we can discuss. In light of the Commission's oft-stated intention not to hamstring cable's new technologies with yesterday's rules, it would be the height of irony to block competitive and independent programming guides based on 20 year old tests that are from the pre-digital era or as a hangover from the analog must carry rulings.

Thank you so much for your attention to this. I look forward to talking with you.

Greg Simon

9/5/2002

1. I'm familiar with Gemstar-TV Guide International, the only source of electronic program guides (EPGs) that are unaffiliated with cable or DBS operators. EPGs are the on-screen interactive guides that help viewers choose what to watch on TV.

2. As a company Gemstar is in a battle for its life in the digital carriage proceeding (CS Dkt. 98-120) that may be on the agenda that issues later today. Gemstar representatives met with Alexis Johns last Thursday. Because so much is at stake, and given that there are so many issues in the proceeding, I ask if you could ask Commissioner Copps to please give this his full consideration.

3. The issue is how to define "program-relatedness" for DTV, and whether the FCC can define it to include EPGs. When the FCC adopted analog carriage requirements it determined that it would rely on the 1982 WGN decision for guidance concerning program-relatedness. The Commission said it intended for WGN to be a flexible guideline that would be used to accommodate and adapt to technological innovation. Cable, however, advocates applying WGN rigidly in a way that makes no sense in the digital context.

4. If the WGN test is applied rigidly in digital, or if any other test is used that excludes EPGs, it will eliminate Gemstar's EPGs because:

a. in digital the EPG data cannot be delivered to television homes in the same way as in analog (it is delivered in consolidated bursts that conserve spectrum but do not meet the antiquated WGN criteria for carriage as part of the must carry signal.)

b. EPGs could still function, but cable operators would strip the data out of broadcast signals they carry to eliminate competition to their own proprietary EPGs.

5. Gemstar's independent, program-neutral EPGs promote multiple policy benefits (consumer access to programs, deployment of advanced technology, fair competition). The Commission has discretion to define program-relatedness in a way that fits digital. Gemstar has suggested an alternate test, or that WGN could be used if modified and/or applied flexibly as the WGN court and the Commission originally intended. Gemstar asks that electronic program guide data be included in whatever definition is adopted.